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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0478

This Decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the Individual") for an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled ~~A~~Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.¹ A local Department of Energy Security Office (LSO) suspended the Individual's clearance after determining that it could not resolve certain derogatory information regarding the Individual's mental health. For the reasons stated below, I find that the Individual's access authorization should be restored.

I. BACKGROUND

The present proceeding involves an Individual who has experienced two psychotic episodes. After the Individual reported the first of these episodes to the LSO, her access authorization was suspended pending evaluation by a psychiatrist (the DOE Psychiatrist) hired by the LSO to evaluate the Individual. The DOE Psychiatrist conducted an extensive review of the Individual's medical and personnel security records. The DOE Psychiatrist also conducted a forensic psychiatric examination of the Individual on February 9, 2006. After conducting his review of these records and his examination of the Individual, the DOE Psychiatrist issued a letter, on February 23, 2006, in which he stated his conclusion that the Individual has an illness or mental condition of a nature which causes, *or may cause*, a significant defect in judgment or reliability.² DOE Exhibit 6 at 10. In this letter, the DOE Psychiatrist opined that "there is evidence of rehabilitation under 10 C.F.R. [Section] 710(c)." DOE Exhibit 6 at 10. Two days later, on February 25, 2006, the Individual was hospitalized for psychiatric treatment after experiencing a second psychotic episode. The DOE Psychiatrist was subsequently informed that the Individual

¹ An ~~A~~access authorization~~@~~ is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. ' 710.5.

² The DOE Psychiatrist did not identify the illness or mental condition that he concluded the Individual suffered from in this report.

had experienced a second psychotic episode. As a result, the DOE Psychiatrist issued a second letter in which he opined “My medical opinion is . . . that there is NOT evidence of rehabilitation, reformation, or other behavioral changes.” DOE Exhibit 4 at 2 (emphasis in the original).

The LSO therefore proceeded to determine that the Individual's disorder raises a security concern under 10 C.F.R. ' 710.8(h). Section 8(h) provides that a security concern is raised when an individual has:

An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes *or may cause*, a significant defect in judgment or reliability.

10 C.F.R. ' 710.8(h) (emphasis supplied). As a result, the Individual's access authorization was placed in administrative review and the present proceeding was commenced. On January 24, 2007, the DOE issued a letter notifying the Individual that the DOE possessed derogatory information that created a substantial doubt concerning his eligibility for access authorization (the Notification Letter). Specifically, the Notification Letter notes that the Individual ~~A~~has an illness or mental condition of a nature which, in the opinion of a psychiatrist, causes, or may cause, a significant defect in her judgment or reliability.@ Notification Letter, Attachment at 1. Because the LSO had received information indicating that the Individual had discontinued using her psychiatric medications on two occasions, the Notification letter also asserts that the Individual has

Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.

10 C.F. R. Section 710.8(l).

In response to the Notification Letter, the Individual filed a request for a hearing. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer. A hearing was held under 10 C.F.R. Part 710. At the hearing, the DOE called two witnesses: the DOE Psychiatrist and a DOE Security Specialist. The Individual called four witnesses: the Treating Psychiatrist, her sister, a co-worker and her supervisor. The Individual also testified on her own behalf. The record of this proceeding was closed on July 14, 2007, when OHA received a copy of the transcript of the hearing.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. ' 710.27(a). Part 710 generally provides

[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest.

10 C.F.R. ' 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the concern; the circumstances surrounding the concern, including knowledgeable participation; the frequency and recency of the concern; the Individual's age and maturity at the time of the concern; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the concern, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. ' ' 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. ' 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization ~~A~~would not endanger the common defense and security and would be clearly consistent with the national interest.[@]10 C.F.R. ' 710.27(d). In the present case, the record shows that a valid and significant question has been raised about the Individual's continued eligibility for an access authorization. However, ~~the~~ Individual has convinced me that restoring her security clearance would not endanger the common defense and security and would clearly be in the national interest.

III. FINDINGS OF LAW AND FACT

Criterion H

Two psychiatrists testified at the Hearing. Both psychiatrists characterized the Individual's condition as a Psychotic Episode, Not Otherwise Specified. Transcript of Hearing (Tr.) at 53, 147. During these psychotic episodes, in which the Individual experienced auditory hallucinations, the Individual's judgment and reliability were obviously severely impaired. If an individual's judgment and reliability is impaired, it is clear that allowing them access to classified information or special nuclear materials would endanger the common defense and security and would not be clearly consistent with the national interest as required by 10 C.F.R.

' 710.27(d). However, the Individual's disorder has, by all accounts, responded well to treatment and is currently in remission. Both psychiatrists are in agreement that, at the time of the hearing, the Individual was not experiencing any symptoms of her mental illness and that the Individual's judgment and reliability are currently unimpaired. The Individual now seeks to have her DOE access authorization restored.

The Individual's mental condition or disorder raises a serious and significant security concern under 10 C.F.R. ' 710.8(h). While the Individual is not currently experiencing any defect in judgment or reliability, the possibility exists that the Individual could experience another psychotic episode. Consequently, I find that the DOE security office properly invoked Criterion H in issuing the Notification letter. However, the existence of a security concern does not preclude eligibility for a DOE authorization. The regulations provide that security concerns may be resolved by mitigating evidence. 10 C.F.R. ' 710.7(c). 10 C.F.R. ' 710.7(c) sets forth a number of factors to be considered by the hearing officer in determining whether granting an access authorization to an individual would not endanger the common defense and security and would be clearly consistent with the national interest. Therefore, having determined that the Individual does suffer from a mental disorder or condition that raises significant security concerns, my responsibility is to make an independent assessment of the seriousness of the risk posed to the common defense and security and the national interest. In that connection, I will consider those factors set forth at 10 C.F.R. ' 710.7(c) in my decision.

Every individual with a DOE access authorization presents a security risk. That risk includes the possibility that an individual will experience a mental illness. However, in some cases, an individual who has previously experienced a severe episode of mental illness presents a greater risk of experiencing a severe episode of mental illness in the future than a randomly chosen member of the general population. In order to consider whether this individual's risk is acceptable, I must consider two factors: (1) the probability that a severe episode will occur in the future, and (2) the expected consequences if it does.

A. Probability of Future Episodes

Both psychiatrists who testified before me indicated that the Individual could experience another psychotic episode. The DOE Psychiatrist first opined that the probability of relapse was around 50 percent. Tr. at 57. However, the DOE Psychiatrist later qualified this estimate by stating it was not appropriate to apply it to a person who was receiving treatment since his estimate of a 50 percent relapse rate was based upon epidemiological studies of patients who were not receiving treatment. Tr. at 83. The DOE Psychiatrist testified that even with treatment an Individual could still relapse, because some persons' disorders are treatment resistant. Tr. at 59-62. The DOE Psychiatrist further testified, "I think with good care, I think it's a favorable prognosis."

The Treating Psychiatrist testified that the Individual responded to treatment unusually quickly. Tr. at 149. He further noted that the Individual had above average insight into her condition and was very compliant with her treatment. Tr. at 149. The Treating Psychiatrist testified that the Individual's second episode was due to his lowering of her "medication too much." Tr. at 153.

The Treating Psychiatrist testified that she was very compliant with her treatment. Tr. at 158. The Treating Psychiatrist noted that he had discussed this matter with the Individual's family and that they had confirmed that fact. Tr. at 158. The Treating Psychiatrist testified that the Individual's prognosis was very good, as long as she continued treatment. Tr. at 157.³ Most importantly, the Treating Psychiatrist testified that the likelihood that the Individual would experience a future psychotic episode was "very, very low." Tr. at 159-160. When asked to provide a percentage, the Treating Psychiatrist opined five percent. Tr. at 160.

Accordingly, the evidence in the record indicates that it is unlikely that the Individual will experience a future psychotic episode.

B. Expected Consequences of Possible Future Episodes

The DOE Psychiatrist testified that an individual with the right attitude towards treatment and a well designed and well implemented "relapse prevention plan" could resolve concerns about judgment and reliability. Tr. at 62. The DOE Psychiatrist noted that the warning signs of an impending episode are "not subtle" and "easy to spot." Tr. at 63.

The Treating Psychiatrist testified that even when the Individual was in the midst of a psychotic episode, she did not act in a manner contrary to her duties to protect classified information or special nuclear materials, noting that in fact the Individual emphasized security during the most recent episode. Tr. at 150. Most importantly, the Treating Psychiatrist testified that if the Individual were to have a relapse, she would most likely be able to detect it early enough to allow for effective treatment. Tr. at 161-162.

After hearing the Individual and the Treating Psychiatrist testify, the DOE Psychiatrist provided further testimony. The DOE Psychiatrist testified, "I believe there is presence of adequate rehabilitation and reformation under 10 C.F.R. 710.7(c)." Tr. at 181.⁴ The DOE Psychiatrist cited the high level of involvement of the Individual's family in her treatment, her history of promptly reporting symptoms, her treatment by the Treating Psychiatrist, and her awareness and recognition of her condition as factors supporting this opinion. Tr. at 182. The DOE Psychiatrist further opined that the Individual was likely to recognize that she was having symptoms and would likely seek help promptly. Tr. at 182.

The testimony of both psychiatrists has convinced me that if the Individual were to begin to relapse, it is highly likely that this relapse would be detected at an early stage and that the Individual's treating physician could prevent the Individual's condition from progressing to a full-blown psychotic episode. Moreover, the Individual's history indicates that on the two occasions when she has experienced psychotic episodes, she sought help rather than engaging in dangerous or destructive acts or behavior. That is not to say that the Individual's mental health condition does not pose an increased risk to the common defense and the national interest: it is clear that if the Individual were to experience a future psychotic episode, her judgment and

³ The Individual's treatment consists of psychotherapy and medication. Tr. at 158.

⁴ The DOE Psychiatrist repeatedly reiterated this conclusion. Tr. at 182, 183.

reliability would be severely impaired during that episode. But rather, I find acceptable the slightly increased risk that the Individual would a) experience a relapse that b) would not be detected in time for effective treatment.

Criterion L

On two occasions since her first psychotic episode, the Individual has chosen to stop taking her medication. The Notification letter cites these occasions as security concerns under Criterion L. However, given the circumstances under which the Individual discontinued the use of her medication, I am not of the opinion that this criterion was properly invoked. The first time that the Individual stopped taking her medicine was shortly after her first psychotic episode. As a result of this episode she was hospitalized and while in the hospital she was prescribed medication. Concerned about the side effects of the medications, she decided to stop taking them between her discharge from the hospital and her initial meeting with the Treating Psychiatrist. Once she met with the Treating Psychiatrist, he explained the importance of her continuing to use the medications. The Individual subsequently complied with his recommendation to continue taking her medications. Subsequently, the Individual was advised by the Treating Physician to lower the dosages of her medications. According to the Treating Psychiatrist, he lowered the dosage of her medications too far and this caused the Individual to experience a second psychotic episode. During the second psychotic episode, the Individual discontinued taking her medication.

I am not of the opinion that the Individual exercised poor judgment in discontinuing medication until she had an opportunity to discuss her concerns about the medication with her personal psychiatrist. At that time, the Individual had not had a opportunity to comprehend the full implications of her mental condition and the need for the medication. The second time that the Individual stopped using her medication is clearly attributable to her being psychotic at the time. Accordingly, I am not of the opinion that the two instances when the Individual discontinued using her psychiatric medications raised significant security concerns under Criterion L.

IV. CONCLUSION

In essence, my decision is a risk assessment. On the whole, the testimony in this case clearly shows that there is a slight risk that the Individual will experience a future episode of her disorder. Moreover, a possibility exists that if such a relapse were to occur, the Individual would experience a substantial defect in judgment or reliability. However, those risks are clearly mitigated by the evidence presented in this proceeding showing that the Individual is receiving excellent and effective preventive care and that the Individual has an excellent family and medical support system that would likely detect and treat any future episode before it resulted in a significant defect in judgment or reliability. Furthermore, I do not believe that any security concerns under Criterion L exist.

Accordingly, I conclude that the Individual has presented compelling evidence that warrants restoring her access authorization. Since the Individual has resolved the DOE's allegations under

Criteria H and L, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's access authorization should be restored. The LSO may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. ' 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: July 17, 2007